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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
T. H. COLLIER,

Appellant,

vs.

SPOKANE COUNTY AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 638

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being the appeal of the denial of a request to increase turf grass base acreage for purposes of a burning permit; having come on regularly for hearing before the Pollution Control Hearings Board on the 23rd day of August, 1974, at Spokane, Washington; and appellant, T. H. Collier, appearing pro se and respondent, Spokane County Air Pollution Control Authority, appearing through James Emacio, deputy prosecuting attorney of Spokane County; and Board members present at the hearing being Walt Woodward (presiding) and Chris Smith; and the Board having considered the sworn testimony, exhibits, records and files herein and

1 and having entered on the 26th day of August, 1974, its proposed Findings
2 of Fact, Conclusions of Law and Order, and the Board having served said
3 proposed Findings, Conclusions and Order upon all parties herein by
4 certified mail, return receipt requested and twenty days having elapsed
5 from said service; and

6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order; and the Board being fully advised in the premises;
8 now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 26th day of
11 August, 1974, and incorporated by this reference herein and attached
12 hereto as Exhibit A, are adopted and hereby entered as the Board's Final
13 Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 25th day of September, 1974.

15 POLLUTION CONTROL HEARINGS BOARD

16 Walt Woodward
17 WALT WOODWARD, Chairman

18 Chris Smith
19 CHRIS SMITH, Member
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26 FINAL FINDINGS OF FACT,
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This matter, the appeal of the denial of a request to increase turf grass base acreage for purposes of a burning permit, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Chris Smith) in Spokane City Hall on August 23, 1974.

Appellant appeared pro se; respondent appeared through James Emacio, deputy prosecuting attorney of Spokane County. Gale Parrish, Spokane court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

From testimony heard and exhibits examined, the Pollution Control

EXHIBIT A

1 Hearings Board makes these

2 FINDINGS OF FACT

3 I.

4 Appellant owns and operates a dry-land farm near Rockford, Spokane
5 County. He produced turf-grass seed in 1971, 1972 and 1973.

6 II.

7 Pursuant to RCW 70.94 (Clean Air Act), the Department of Ecology
8 adopted WAC 18-16 in 1972, a regulation giving the department and activated
9 air pollution control authorities jurisdiction over and control of
10 emissions from specific types of agricultural burning, including turf
11 grasses.

12 III.

13 The annual post-harvest burning of turf-grass fields is essential
14 to the profitable production of turf-grass seed. Removal of turf-grass
15 straw from dry-land fields makes it infeasible to burn the stubble.

16 IV.

17 WAC 18-16 of 1972 required that all straw be removed from turf-grass
18 fields prior to burning, effective immediately after the 1974 harvest.
19 Dry-land turf-grass farmers of Spokane County protested this regulation.
20 The Department of Ecology held several meetings with the protesting
21 farmers and, as a result, adopted an amended WAC 18-16 in 1973. The
22 amended regulation established the alternate of a pro rata reduction in
23 the number of acres to be burned.

24 V.

25 Pursuant to the above-described alternate, the Department of Ecology
26 mailed an "informational memorandum" under date of May 3, 1974 to all

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 dry-land grass growers. It specified that an approved alternate to
2 removal of straw before burning would be the setting aside of 20 percent
3 from a base acreage "compiled from all permit information on file with
4 the (burning permit) agency since 1971." The 80 percent remainder could
5 be burned without removal of straw; the 20 percent set aside could not
6 be burned.

7 VI.

8 Respondent is the activated air pollution control authority and the
9 burning permit agency for Spokane County.

10 VII.

11 Appellant filed with respondent burning permit applications for
12 70 acres in 1971, 200 acres in 1972 and 204 acres in 1973. Respondent,
13 following its announced practice of determining a farmer's base acreage
14 from the largest acreage filed with respondent for burning permit
15 applications in 1971, 1972 and 1973, established in 1974 that appellant's
16 base acreage would be 204 acres.

17 VIII.

18 Appellant, in 1973, planted 40 acres for the first time in blue
19 grass. He did not include these 40 acres in his 204-acre burning permit
20 application for 1973 because it is the general practice not to burn the
21 first year.

22 IX.

23 Appellant, informed by respondent in 1974 that his base acreage was
24 204 acres, requested that the 40 acres planted new to blue grass in 1973
25 should be included for a total of 244 acres. Respondent denied the
26 request and that denial is the subject of this appeal. Respondent, citing

1 WAC 18-16, contended it could not approve new acreage for burning.

2 X.

3 WAC 18-16-030(1), as amended in 1973, gives respondent the authority
4 to consider a farmer's "need to carry out such burning as weighed against
5 the public's interest in clean air" and to "limit the number of acres . .
6 . . to effectively control emissions"

7 XI.

8 Any Conclusion of Law cited hereinafter which is deemed to be a
9 Finding of Fact is adopted herewith as same.

10 From these Findings, the Pollution Control Hearings Board comes
11 to these

12 CONCLUSIONS OF LAW

13 I.

14 WAC 18-16, as amended in 1973, provides a reasonable and equitable
15 alternate to the requirement that all straw must be removed from turf-
16 grass fields prior to burning.

17 II.

18 Dry-land turf-grass farmers of Spokane County, including appellant,
19 were given both oral and written notice that the base acreage for the
20 set-aside alternate would be the burn-permit applications on file with
21 respondent since 1971.

22 III.

23 Respondent's denial of appellant's effort to enlarge his base
24 acreage on the basis of 40 acres newly-planted to seed in 1973 was in
25 accordance with the agreement reached by the Department of Ecology and
26 dry-land farmers in 1973 and distributed to those farmers in the

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 "informational memorandum" of May 3, 1974.

2 IV.

3 Appellant contends that the addition of the 40 acres to his allowable
4 1974 burn acreage will extend his smoke emission by only ten minutes.
5 This may be so and the Board can understand appellant's contention.
6 Nevertheless, most emissions which are the subject of concern in
7 RCW 70.94 (Clean Air Act) are the cumulative result of many "small"
8 emissions. Ten additional minutes of smoke emission, therefore is
9 important. The Board also has considerable sympathy for appellant's
10 contention that his turf-grass field is an effective tool in combating
11 soil erosion. The Board, however, has no jurisdiction in this area and
12 neither does respondent. Perhaps the time will come when all environ-
13 mental matters related to farming will be placed under one governmental
14 agency for purposes of regulation. But that is not the case now. In
15 this matter, the Board is confined to the terms of RCW 70.94 and the
16 appropriate Washington Administrative Code (WAC) provisions.

17 V.

18 Respondent's actions in this matter not only satisfy the agreement
19 reached by the Department of Ecology and dry-land farmers but carry
20 out the intent and spirit of RCW 70.94 and, in particular, WAC 18-16-030(1)
21 as amended in 1973. Respondent's denial of appellant's acreage increase
22 request was a proper and reasonable exercise of its duties under the
23 law and was neither arbitrary nor capricious.

24 VI.

25 Any Finding of Fact which is deemed to be a Conclusion of Law is
26 adopted herewith as same.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Therefore, the Pollution Control Hearings Board issues this
2 ORDER

3 The appeal is denied.

4 DONE at Lacey, Washington this 26th day of August, 1974.

5 POLLUTION CONTROL HEARINGS BOARD

6 Walt Woodward
7 WALT WOODWARD, Chairman

8 Chris Smith
9 CHRIS SMITH, Member

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